Supreme Court, U.S.
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No. 93-263

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1993

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MATT T. KOKKONEN,
*Petitioner,*

v.

GUARDIAN LIFE INSURANCE COMPANY OF AMERICA;
GUARDIAN INSURANCE AND ANNUITY CORPORATION;
and GUARDIAN INVESTOR SERVICES CORPORATION,
*Respondents.*

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**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

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## BRIEF FOR RESPONDENTS

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## QUESTION PRESENTED

Does a district court have jurisdiction to exercise its discretion to enforce a settlement agreement after dismissal of the case where the settlement was entered into on the record, at trial, with the Court's active participation, and where the Court anticipated its involvement in any enforcement of the agreement?

## PARTIES TO THE PROCEEDING

Two of the respondents listed in the case caption, Guardian Insurance and Annuity Corporation and Guardian Investor Services Corporation, were dismissed as parties prior to the trial in the District Court, but were named inadvertently in the appeal to the Ninth Circuit. Joint Appendix ("J.A.") at 237 n.1. These entities are wholly-owned subsidiaries of respondent The Guardian Life Insurance Company of America ("Guardian"). Neither Guardian nor any of its affiliated companies is publicly traded. Guardian does not have a parent corporation and all its subsidiaries are wholly owned. Petitioner's wife, Jean Kokkonen, was dismissed as a party during the District Court proceedings.

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## BRIEF FOR RESPONDENTS

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### OPINIONS BELOW

The Order of the United States District Court for the Eastern District of California, entered on August 19, 1992, enforcing the parties' settlement agreement is at J.A. 175. The unpublished Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit (Browning, Kozinski, and Rymer, JJ.), entered on May 18, 1993, affirming that order is at J.A. 264.

### JURISDICTION

The District Court had jurisdiction over petitioner's complaint and respondents' counterclaims pursuant to 28

U.S.C. §§ 1441(a) and 1332(a)(1). The Ninth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## FEDERAL RULES PROVISIONS

Rule 1 of the Federal Rules of Civil Procedure provides as follows:

> These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 60 of the Federal Rules of Civil Procedure provides in pertinent part as follows:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was



> entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. § 1655, or to set aside a judgment for fraud upon the court. Writs of *coram nobis, coram vobis, audita querela,* and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

## STATEMENT OF THE CASE

Petitioner Matt Kokkonen ("Kokkonen") commenced this action on April 6, 1990, in the California Superior Court for the County of Tulare against The Guardian Life Insurance Company of America ("Guardian") and two of its wholly-owned subsidiaries. J.A. 6-57. Kokkonen's complaint alleged a variety of claims arising out of the termination of his agent and general agency contracts. J.A. 9-29. Guardian timely removed the case to the United States District Court for the Eastern District of California pursuant to 28 U.S.C. §§ 1332, 1441, and counterclaimed against Kokkonen based on his wrongful conduct following the termination of his contracts. J.A. 3-5, 58-75. After full discovery, the case proceeded to a three-day jury trial before The Honorable Robert E. Coyle. J.A. 218. After closing arguments but before the Court instructed the jury, Kokkonen, through his counsel, sought to settle the case. *Id. See also* J.A. 175.

After various discussions, the parties formally appeared in chambers before Judge Coyle to conclude their settlement discussions on the record. The transcript of the proceedings in chambers, which is found at J.A. 76-88, memorializes the terms of the settlement agreement and

reflects both Kokkonen's stated acquiescence to those terms and the active role taken by Judge Coyle in clarifying those terms. The transcript reveals that Judge Coyle plainly anticipated that any proceeding to enforce the settlement agreement would require an appearance before him and not in state court. For instance, after discussing a particular issue with the parties, Judge Coyle stated that "I'm just trying to get this straight, and it makes sense and that you can all live with [sic] I don't see you all back here in the future." J.A. 80.

At another point during the settlement discussions, Judge Coyle stated that:

> I don't want to see you people come back here to have the agreement enforced. I don't want to see anybody fooling around, that's all I can say . . . . You all have better things to do than worry about coming back here.

J.A. 83. Pursuant to the settlement reached in chambers, the parties executed a Stipulation and Order of Dismissal With Prejudice dismissing the complaint and cross-complaint. Judge Coyle signed the Stipulation and Order and ordered the action dismissed. J.A. 89-91.

Shortly after entry of the Stipulation and Order, Kokkonen in bad faith breached material terms of the settlement agreement by refusing to return certain Guardian files, despite having agreed unequivocally to return *all* Guardian files or files containing information about Guardian policyholders. J.A. 78. Kokkonen also breached the settlement agreement by communicating with Guardian on behalf of a client and Guardian policyholder, which he specifically had agreed not to do. J.A. 85-86.[1]

[1] When, during the settlement discussions in chambers, Kokkonen had professed not to understand this aspect of the agreement, the Court explained it to him as follows:

> If you—if a policyholder's information is going to be requested, it's going to be requested by the policyholder. If you're giving advice to the policyholder, it'll be done in good faith, and that's it. If it's hard to understand—

J.A. 85. At that point, Kokkonen interrupted the court and stated, "That's a good statement, sir. I can accept that." J.A. 86. Notwithstanding this representation, Kokkonen almost immediately refused to comply with those terms. J.A. 95-130, 181-82.



Guardian filed a motion to enforce the settlement agreement before Judge Coyle. J.A. 92. Following briefing (J.A. 95-159) and oral argument (J.A. 160-74), Judge Coyle found that Kokkonen had failed to comply with the settlement agreement and under threat of contempt entered a strongly worded Order Enforcing Settlement Agreement dated August 19, 1992. J.A. 175-82. With regard to the issue of his jurisdiction to enforce the settlement agreement, Judge Coyle noted that:

> [A]s the court determined at oral argument, there is no doubt that it has jurisdiction to enforce the settlement agreement. As recently as last year the Ninth Circuit reaffirmed the inherent power of the district courts to enforce settlement agreements. *Wilkinson v. FBI*, 922 F.2d 555, 557 (9th Cir. 1991). *See also, The Matter of Springpark Associates*, 623 F.2d 1377, 1380 (9th Cir. 1980) ("[t]he authority of a trial court to enter a judgment enforcing a settlement agreement has as its foundation the policy favoring the amicable adjustment of disputes and the concomitant avoidance of costly and time-consuming litigation"), quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978).

J.A. 180.

The Court also noted that Kokkonen had "expressed no concern as to the certainty of the agreement at the time," and the Court had "no trouble recollecting that Kokkonen was to turn over *all* Guardian files in his possession." J.A. 181 (emphasis in original). The Court

rejected Kokkonen's arguments in opposition to the motion to enforce, finding them "seriously wanting," and found that Kokkonen had "blatantly breached the terms of the settlement agreement." J.A. 180-81. Specifically, the court found:

> [T]hat Mr. Kokkonen has been stubbornly and unjustifiably uncooperative in refusing to comply with the terms of the settlement agreement . . . by writing to The Guardian on behalf of a policyholder as well [as] withholding files that he agreed to return. The court will not tolerate such behavior.

J.A. 181-82. Kokkonen's repudiation of the agreement was so unjustified that he also was ordered to pay Guardian its fees and costs incurred in bringing the motion to enforce. J.A. 182.

Kokkonen did not contest on appeal any of the findings contained in Judge Coyle's Order at to his bad faith breach and the award of fees to Guardian. His only argument to the Ninth Circuit was that the district court lacked jurisdiction to enforce the settlement agreement that had been reached with Judge Coyle's assistance and placed on the record. J.A. 183-213. The Ninth Circuit (Browning, Kozinski and Rymer, JJ.) rejected Kokkonen's argument and affirmed the Order Enforcing Settlement Agreement. J.A. 264-67.

In accordance with its previous decision in *Wilkinson v. Federal Bureau of Investigation*, 922 F.2d 555, 557 (9th Cir. 1991), the Ninth Circuit determined that "the district court properly assumed jurisdiction to decide Guardian's post-judgment motion." J.A. 267. Citing *Wilkinson*, the Ninth Circuit held that "the district court may, following its dismissal of an action pursuant to a settlement agreement, enter a subsequent order enforcing the terms of the agreement." J.A. 265.

Kokkonen filed a petition for a writ of certiorari, which was granted on October 18, 1993.



## SUMMARY OF ARGUMENT

Neither petitioner nor any of the circuit courts of appeal disputes that district courts have jurisdiction to enforce settlement agreements in connection with pending actions. The parties and the circuit courts part ways with respect to the issues of (1) whether district courts may exercise jurisdiction to hear and resolve disputes regarding settlements after a case has been dismissed, and (2) the procedural mechanism for bringing such disputes before the district courts.

The Ninth Circuit correctly decided that the district court had jurisdiction to enforce a settlement agreement which had been entered into on the record, with the court's participation, and where the court anticipated its ability to enforce the agreement in the future, should that be necessary. This decision is supported by the well-established doctrine of ancillary jurisdiction, which enables the federal courts to effect complete justice among the parties to a dispute without violating principles of limited federal jurisdiction. *Julian v. Central Trust Co.*, 193 U.S. 93, 113-14 (1904).

The procedural mechanism for such enforcement need not be a technical minefield. Rather, the doctrine of ancillary jurisdiction permits a settlement dispute to be brought before the court via a simple motion to enforce, as was done in this case. Federal Rule of Civil Procedure 60(b) also provides appropriate procedural mechanisms to enable a court to enforce a settlement agreement after the dismissal of a case. Rule 60(b) is equitable in nature and has been liberally construed. Whether Guardian's Motion to Enforce Settlement Agreement in this case is treated as an "independent action" expressly preserved under Rule 60(b), or as the equivalent of a formal Rule 60(b) motion, it provided an appropriate mechanism for the district court to reopen the case and enforce the settlement agreement. Further, because both a motion under Rule 60(b) and the "independ-

ent action" preserved under that Rule are within a federal court's ancillary jurisdiction, no independent jurisdictional grounds are needed to allow the court to exercise jurisdiction over the settlement dispute. Once the case is restored to the federal court's docket (through the exercise of ancillary jurisdiction or pursuant to Rule 60(b)) the court may either resolve the parties' settlement dispute or, if such resolution is not possible or appropriate, proceed with the underlying federal litigation.

Sound policy and practical considerations support this simple and common-sense resolution of the instant dispute. The discretionary exercise of jurisdiction to enforce settlement agreements can only promote the well-established public policies favoring settlement and conservation of judicial resources. Certainty of access to the court familiar with a case and the corresponding ability to obtain expeditious and cost-efficient relief in the event of a settlement-related dispute will encourage litigants to settle.

Contrary to the arguments of petitioner and *amici*, endorsement of jurisdiction to enforce the settlement agreement in this case will not flood the federal courts with complex questions of state law that are so removed from the original litigation as to impose an undue burden on the federal courts. Rather, the federal courts will retain discretion to decide whether they—or the state courts—are better equipped to resolve the particular settlement dispute in question.

In this case, the district court was intimately involved in the negotiation and clarification of the settlement with the parties, and the "blatant breach" of the settlement agreement arose shortly after dismissal of the case. Moreover, the district court anticipated that it would have jurisdiction to enforce the settlement. Under these circumstances, both public policy and practical litigation considerations strongly militate in favor of confirming the



jurisdiction of the federal court to resolve the settlement dispute.

## ARGUMENT

### I. A FEDERAL COURT MAY, AFTER DISMISSAL OF A CASE, EXERCISE ITS DISCRETION TO ENFORCE A SETTLEMENT REACHED ON THE RECORD WITH THE COURT'S ACTIVE PARTICIPATION

As discussed below, this Court long has recognized that federal courts have jurisdiction to resolve disputes that may be ancillary to or derived from the dispute that initially provided subject matter jurisdiction. Thus, a determination by this Court that a federal court, in its discretion, has jurisdiction to enforce a settlement agreement, reached on the record with the active participation of the court, after dismissal of a case, would fit comfortably within this Court's precedents. In addition, the exercise of such jurisdiction is supported by important practical and policy considerations, including policies favoring settlement, the expeditious and efficient resolution of disputes, and fairness to litigants.

Kokkonen concedes that "[i]t is well-settled in the Ninth Circuit Court of Appeals ("Ninth Circuit"), as in other circuit courts of appeals, that a district court has the 'inherent power summarily to enforce a settlement agreement with respect to an action *pending before it*.'" Petitioner's Brief ("Pet. Br.") 17 (emphasis in original) (quoting *In re Springpark Assoc.*, 623 F.2d 1377, 1380 (9th Cir.), *cert. denied*, 449 U.S. 956 (1980)).[2] This

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[2] Similarly, in his brief in the Ninth Circuit, Kokkonen quoted language stating that "it is well-settled" that courts have jurisdiction to enforce settlement agreements in pending cases. J.A. 193-94. *See also* J.A. 260-61 (Kokkonen's Reply Brief in the Ninth Circuit, in which he recognized that after a case is reopened, a settlement agreement may be enforced because the action once again properly is before the court).

concession by Kokkonen is virtually compelled by the significant body of case law that holds that courts have jurisdiction to enforce settlement agreements in cases pending before them. *See, e.g., Halderman ex rel. Halderman v. Pennhurst State School & Hosp.*, 901 F.2d 311, 317 (3d Cir.), *cert. denied*, 498 U.S. 850 (1990); *Millner v. Norfolk & W. Ry. Co.*, 643 F.2d 1005, 1009 (4th Cir. 1981); *In re Springpark Assoc.*, 623 F.2d at 1380; *Meetings & Expositions, Inc. v. Tandy Corp.*, 490 F.2d 714, 717 (2d Cir. 1974); *Kukla v. National Distillers Prods. Co.*, 483 F.2d 619, 621 (6th Cir. 1973); *Massachusetts Casualty Ins. Co. v. Forman*, 469 F.2d 259, 260 (5th Cir. 1972), *cert. denied*, 424 U.S. 914 (1976); *Autera v. Robinson*, 419 F.2d 1197, 1200 (D.C. Cir. 1969); *Cummins Diesel Mich., Inc. v. The Falcon*, 305 F.2d 721, 723 (7th Cir. 1962).

The narrow issue before this Court thus is whether the dismissal of a case without a formal retention of jurisdiction prevents a district court in all circumstances from exercising its discretion to hear and resolve disputes regarding a settlement agreement that was entered into while the case was pending before the court. As discussed below, both previous decisions of this Court and significant public policies support the conclusion that a district court, in its discretion, may exercise jurisdiction to enforce a settlement agreement after a case has been dismissed.

### A. Well Established Principles Of Ancillary Jurisdiction Support The Ability Of A Court To Exercise Its Discretion To Enforce A Settlement Agreement After The Dismissal Of A Case

Historically, both before and after the adoption of the Federal Rules of Civil Procedure in 1938, federal courts have exercised jurisdiction over disputes that are ancillary to or derived from the action that initially brought the parties before the court. Whether this jurisdiction is characterized as "ancillary,"[3] "inherent,"[4] "incidental,"[5] "supplemental,"[6] or "derivative,"[7] the concept is rooted in equitable principles which permit a federal court to resolve all related disputes so as to effect complete justice between the parties. "Ancillary" or "supplemental" matters are outgrowths of the underlying proceeding and the court's subject matter jurisdiction therefore is derived from the original action.



Ancillary jurisdiction is a doctrine of the English common law, which was incorporated into colonial and early federal jurisprudence. *See generally* M. McManamon, *Dispelling the Myths of Pendent and Ancillary Jurisdic-*

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[3] *See* discussion below, pp. 12-15, of cases where this Court has recognized numerous instances in which a federal court may exercise jurisdiction over matters that might be considered ancillary to a federal court action.

[4] *See Young v. United States ex rel. Vuitton et Fils, S.A.*, 481 U.S. 787, 808-09 (1987) (a court possesses the inherent power to appoint a special prosecutor to prosecute a party for contempt); *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371-72 (6th Cir.), *cert. denied*, 429 U.S. 862 (1976) (court has inherent power to enforce settlement agreement); *Hamilton v. School Committee of Boston*, 725 F. Supp. 641, 647 (D. Mass. 1989) (a federal district court has "inherent ancillary jurisdiction" to enforce a settlement agreement even after the underlying sex discrimination action has been dismissed).

[5] *See Osborn v. Bank of the United States*, 22 U.S. 738, 822 (1824) (when a federal court has jurisdiction, then all other questions "must be decided as incidental" to the question that originally conferred jurisdiction).

[6] *See Freeman v. Howe*, 65 U.S. 450, 460 (1860) (describing a nonfederal bill brought before the federal court as "supplementary"). Most recently, in 28 U.S.C. § 1367, Congress has codified the law of "Supplemental Jurisdiction."

[7] *See Fairfax Countywide Citizens Ass'n v. Fairfax, Va.*, 571 F.2d 1299, 1305 (4th Cir.), *cert. denied*, 439 U.S. 1047 (1978) (stating that doctrines of pendent and ancillary jurisdiction fall within the category of cases in which a court may exercise "derivative jurisdiction").

*tion: The Ramifications of a Revised History*, 46 Wash. & Lee L. Rev. 863, 876-902 (1989). The federal courts initially maintained the English distinction between suits at law and equity [8] and American equity practice encompassed precedents of the English Chancery courts. *See* S. Glenn, Note, *Federal Supplemental Enforcement Jurisdiction*, 42 S.C. L. Rev. 469, 474-79 (1991). The objective of equity jurisprudence was a complete and just determination of all aspects of a controversy within a single action.[9]

In 1904, this Court defined ancillary jurisdiction as follows:

> A bill filed to continue a former litigation in the same court, *or which relates to some matter already partly litigated in the same court, or which is an addition to a former litigation in the same court*, by the same parties or their representatives standing in the same interest, *or to obtain and secure the fruits, benefits, and advantages of the proceedings and judgment in a former suit in the same court by the same or additional parties* . . . or to prevent a party from using the proceedings and judgment of the same court for fraudulent purposes, or to restrain a party from using a judgment to perpetrate an injustice, or obtain an inequitable advantage over other parties to the former judgment or proceeding, *or to obtain any equitable relief in regard to, or connected with, or growing out of, any judgment or proceeding at law rendered in the same court*, or to assert any claim, right, or title to property in the custody of the court, or for the defense of any property rights, or the collection of assets of any estate being administered by the court, —is an ancillary suit.

*Julian v. Central Trust Co.*, 193 U.S. at 113-14 (emphasis added) (citing 1 Bates on Federal Equity Procedure § 97). This definition of ancillary jurisdiction quite explicitly includes disputes which might arise *after dismissal* of the initial action and which otherwise might no longer be within the court's jurisdiction. The discretionary use of ancillary jurisdiction has been endorsed by this Court in numerous other cases.

For example, suits to enjoin or enforce judgments have been determined to be ancillary to the main action, even where diversity or federal question jurisdiction is absent. *See, e.g., Wayman v. Southard*, 23 U.S. 1, 29 (1825) (subsequent suit to execute on judgment in first suit); *Root v. Woolworth*, 150 U.S. 401, 410-13 (1893) (enforcement of previous judgment); *Supreme Tribe of Ben Hur v. Cauble*, 255 U.S. 356, 367 (1921) (ancillary bill allowed to protect rights adjudicated in earlier decree); *Dugas v. American Surety Co.*, 300 U.S. 414, 428 (1937) (supplemental bill for injunction against further prosecution of suit, based on prior decree); *Sandlin v. Corporate Interiors, Inc.*, 972 F.2d 1212, 1216 (10th Cir. 1992) (a court has ancillary jurisdiction to give effect to its own judgments).

In addition, a supplemental bill requesting construction of a court's decree was held to be within a federal court's supplemental jurisdiction. *Minnesota Co. v. St. Paul Co.*, 69 U.S. 609, 633-35 (1864). Similarly, in *Pacific R.R. of Mo. v. Missouri Pac. Ry. Co.*, 111 US. 505, 522 (1884), a second suit alleging fraud in connection with a prior foreclosure suit and asking that the decree in

[8] Judiciary Act of September 24, 1789, ch. 28, § 16, 1 Stat. 73, 82 (1789).

[9] A matter ancillary to the main dispute could be brought before a court by a party filing a "dependent bill" or a "dependent supplemental bill" in equity. Also, a court of equity could exercise auxiliary jurisdiction to assist a court of law via an "auxiliary bill." A supplemental bill could be filed at any time after the filing of a suit, even after the court entered its decree. S. Glenn, Note, *Federal Supplemental Enforcement Jurisdiction*, 42 S.C. L. Rev. at 474-78, citing 1 E. Daniell, Daniell's Chancery Practice 379 (Perkins First Am. ed. 1946). As discussed below, these equitable principles and historical practice also supplied the underpinnings for Federal Rule of Civil Procedure 60(b).

the first suit be set aside, was ancillary to the first suit and within the federal court's jurisdiction despite a lack of diversity among the parties. In *Freeman v. Howe*, 65 U.S. at 457-60, a state attachment proceeding was ancillary to a federal proceeding where the property had been seized by the United States Marshal.

This Court also endorsed ancillary jurisdiction where a party had died and the party substituted for the decedent otherwise would have defeated diversity jurisdiction. In *Dunn v. Clarke*, 33 U.S. 1, 3 (1834), for example, a plaintiff who had obtained a judgment at law died before the court executed the judgment. The decedent's representative and the original defendant were all Ohio citizens, but this Court held that the action to stay the judgment was ancillary to the original proceeding. *See also Clarke v. Mathewson*, 37 U.S. 164, 171 (1838) (after plaintiff died, bill of revivor filed by plaintiff's administrator was within the court's ancillary jurisdiction despite lack of diversity between administrator and original defendants).

Ancillary jurisdiction has also been extended to nonfederal claims. *See, e.g., Siler v. Louisville & Nashville R.R.*, 213 U.S. 175, 191 (1909) (federal court can decide nonfederal claims after dismissal of federal claims); *Moore v. New York Cotton Exch.*, 270 U.S. 593, 608-09 (1926) (district court has jurisdiction over nonfederal counterclaim after federal claim dismissed); *Dery v. Wyer*, 265 F.2d 804, 807-08 (2d Cir. 1959) (ancillary jurisdiction over a third party claim that lacks diversity is not lost when main claim was settled); *Rosenbaum v. Council Bluffs Ins. Co.*, 37 F. 724, 725 (C.C.N.D. Iowa 1889) (bill for reformation of insurance policy was ancillary to an action removed to federal court).

A court's jurisdiction over the issue of attorney's fees, after the dismissal of the main action, is also within its ancillary jurisdiction. *See, e.g., White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445, 450-52 (1982)



(attorney's fees questions not subsumed by decision on the merits); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 167-70 (1939); *United States v. Ford*, 650 F.2d 1141, 1143-44 (9th Cir. 1981), *cert. denied sub nom., Midwest Growers Coop. v. United States*, 455 U.S. 942 (1982) (the issue of attorney's fees is ancillary to the underlying action and survives independently under the court's equitable jurisdiction).[10]

Ancillary jurisdiction also exists for purposes of sanctions. This Court has held that the district courts possess the "inherent powers" to impose sanctions under Rule 11 of the Federal Rules of Civil Procedure, even after dismissal of the action in which the sanctionable conduct was committed. *See Willy v. Coastal Corp.*, 112 S. Ct. 1076, 1080-81 (1992); *Chambers v. NASCO, Inc.*, 111 S. Ct. 2123, 2132-40 (1991).

Thus, this Court has recognized (both before and after the adoption of the Federal Rules of Civil Procedure in 1938) the availability of jurisdiction over matters that may be ancillary to or derived from the dispute that provided a basis for subject matter jurisdiction. In the foregoing cases, any potential tension between limited federal jurisdiction and the goals of fairness and judicial economy was harmonized by the availability of ancillary jurisdiction.

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[10] Indeed, entirely separate disputes stemming from an award of attorney's fees have been held to be within the ancillary jurisdiction of a federal court. For example, in *Valerio v. Boise Cascade Corp.*, 645 F.2d 699, 700 (9th Cir.), *cert. denied*, 454 U.S. 1126 (1981), after settlement of a class action, the Court of Appeals held that the district court could exercise ancillary jurisdiction over the plaintiff's state law claims for fraud and malpractice against the class attorneys, whose fees had been awarded as part of the settlement. Similarly, in *Grimes v. Chrysler Motors Corp.*, 565 F.2d 841, 843-44 (2d Cir. 1977), following the settlement of a diversity action, the two attorneys for the plaintiff disputed the distribution of the settlement proceeds. One attorney commenced an action in state court and the other moved in the federal court for distribution of the funds. The federal court determined that it had ancillary jurisdiction over what had been characterized as a "simple contract dispute" and that it could distribute the funds, despite the nondiversity of the parties.

In this case, Kokkonen approached Guardian about a settlement after closing arguments in a three-day jury trial. J.A. 218. The District Judge actively participated in the settlement process in a proceeding in chambers. J.A. 76-88. With the court's active assistance, a settlement was concluded and placed on the record. *Id.* The transcript of that proceeding memoralizes the terms of the settlement agreement. *Id.* Moreover, the District Judge clearly contemplated that any proceeding to enforce the setlement agreement would be brought before him, not in a state court that was a complete stranger to the proceedings. J.A. 80, 83.

Under these circumstances, the district court had jurisdiction after dismissal of the case, in its discretion, to hear and decide Guardian's motion to enforce the settlement agreement. Jurisdiction in the district court existed because the issue of the enforceability of the settlement agreement was directly ancillary to and derived from the underlying case. *See Aro Corp. v. Allied Witan Co.*, 531 F.2d at 1371 ("[t]he contract entered into between the parties cannot be viewed independently of the original suit; its formation was an outgrowth of this case.") Consistent with its application throughout the centuries of American jurisprudence, the doctrine of ancillary jurisdiction comfortably accommodates the enforcement of a settlement agreement that was entered into with the active participation of the District Judge and that was "blatantly breached" (J.A. 181-82) by Kokkonen.

### B. Guardian's Motion To Enforce Was An Appropriate Mechanism For Invoking The Court's Jurisdiction To Enforce The Settlement Agreement

As discussed above, Guardian filed a Motion to Enforce Settlement Agreement in the district court. J.A. 92-94. While other means may have been available to reopen a case that had been dismissed, Guardian's motion provided an appropriate mechanism for invoking the district court's jurisdiction.



Kokkonen concedes that a court has jurisdiction to enforce a settlement agreement in a pending case. Pet. Br. 17; J.A. 193-94, 260-61. Moreover, numerous cases have held that a dismissal may be set aside where there has been a breach of the settlement agreement that resulted in the dismissal. *See, e.g., United States v. Baus*, 834 F.2d 1114, 1124 (1st Cir. 1987); *Hinsdale v. Farmers Nat'l Bank & Trust Co.*, 823 F.2d 993, 996 (6th Cir. 1987); *Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F.2d 599, 605 (5th Cir. 1986); *Dankese v. Defense Logistics Agency*, 693 F.2d 13, 15 (1st Cir. 1982); *Kelly v. Greer*, 365 F.2d 669, 670-71 (3d Cir. 1966), *cert. denied*, 385 U.S. 1035 (1967). Kokkonen does not contest this proposition. Pet. Br. 36. The limited dispute in this case thus centers largely around the technical mechanism for reopening a case that has been dismissd and the effect of such a reopening.

The Ninth Circuit does not require a party whose case has been dismissed to move pursuant to Fed. R. Civ. P. 60(b) to vacate a dismissal in order to seek enforcement of a settlement agreement. *See, e.g.*, J.A. 180; *Wilkinson v. Federal Bureau of Investigation*, 922 F.2d at 557. *Accord Joy Mfg. Co. v. National Mine Serv., Inc.*, 810 F.2d 1127, 1128-29 (Fed. Cir. 1987). *See also Mathewson Corp. v. Allied Marine Indus., Inc.*, 827 F.2d 850, 852 (1st Cir. 1987) (district court retains inherent power to enforce settlements). Rather, a party may bring the matter within the court's jurisdiction by a motion to enforce a settlement agreement. *Id.* Guardian, accordingly, did not formally cite Rule 60(b) as authority for its Motion to Enforce Settlement Agreement. J.A. 92-130.[11] In

[11] Nor was formal use of Rule 60(b) required because, as discussed above, the district court properly exercised ancillary jurisdiction over the motion. It has been observed in this regard that:

> The exercise of this ancillary jurisdiction should not depend on resurrecting the shell of an old case whose merits are

any event, Guardian's Motion to Enforce Settlement Agreement fulfilled all the requirements of Rule 60(b) and was sufficient to allow the district court to assert jurisdiction and to enforce the settlement agreement.

### 1. *The Equitable Policies Underlying Rule 60(b) Complement Those of the Ancillary Jurisdiction Doctrine*

Rule 60(b), modelled after California Code of Civil Procedure Section 473, was intended to provide post-judgment relief to remedy a federal court's loss of jurisdiction over cases at the end of term time. *See generally* 6A J. Moore, J. Lucas, and J. Grotheer, Jr., Moore's Federal Practice, ¶ 60.04[1] (2d ed. 1993). Prior to the enactment of Rule 60(b), post-judgment relief could be obtained from the court that rendered the original judgment by way of certain writs. These writs (*audita querela, coram nobis, coram vobis* and bill of review) often corresponded with the types of equitable proceedings entertained by the courts in their exercise of ancillary jurisdiction.[12] Rule 60(b) abolished the writ practice and incorporated the types of relief that had been afforded previously by the writs. *See* Advisory Committee Note to 1946 amendment to Rule 60(b). The Rule, however, specifically preserves a party's right to commence an "independent action." Fed. R. Civ. P. 60(b) ("This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding . . . .")

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beyond consideration. Such use of Rule 60(b) is disfavored in the First Circuit.

*Hamilton v. School Committee of Boston*, 725 F. Supp. at 647.

[12] For instance, the legal writ of *audita querela* (the equitable counterpart of which was the bill of review) was an action brought by a "judgment defendant" on some matter of defense or discharge arising after the rendition of the judgment. *See generally* 7 J. Moore, J. Lucas, and J. Grotheer, Jr., Moore's Federal Practice ¶ 60.13 (2d ed. 1993).



Consistent with its equitable underpinnings, Rule 60(b) is remedial in nature and is to be liberally construed. *See, e.g., Andrews v. Heinold Commodities, Inc.*, 771 F.2d 184, 188 (7th Cir. 1985); *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985). If a party files what is in essence a Rule 60(b) motion in the wrong form, the court may treat the filing as a Rule 60(b) motion. *See, e.g., Lasky v. Continental Prods. Corp.*, 804 F.2d 250, 253 n.4 (3d Cir. 1986); *United States v. Wissahickon Tool Works*, 200 F.2d 936, 938 (2d Cir. 1952). *See generally* 7 J. Moore, J. Lucas, and J. Grotheer, Jr., Moore's Federal Practice, ¶ 60.18[8] (2d ed. 1993).

### 2. *Guardian's Motion To Enforce Settlement Agreement Was Functionally Equivalent to The "Independent Action" Expressly Permitted Under Rule 60(b)*

As noted above, Rule 60(b) expressly preserves the right of a court "to entertain an independent action to relieve a party from a judgment, order, or proceeding."[13] No separate jurisdictional basis for such an independent action need be shown because the action falls within the court's ancillary jurisdiction. *See Pacific R.R. of Mo. v. Missouri Pac. Ry. Co.*, 111 U.S. at 522 (independent action is ancillary to main one where former brought in same court that rendered initial judgment); *Cresswell v. Sullivan & Cromwell*, 922 F.2d 60, 70 (2d Cir. 1990), *cert. denied*, 112 S. Ct. 3036 (1992); *Crosby v. Mills*, 413 F.2d 1273, 1276 (10th Cir. 1969); *Martina Theatre Corp. v. Schine Chain Theatres, Inc.*, 278 F.2d 798, 800

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[13] The Stipulation and Order of Dismissal With Prejudice in this case was signed by the parties *and* the Court. J.A. 89-91. Judge Coyle signed immediately under the language "IT IS SO ORDERED." J.A. 91. Thus, the Stipulation and Order of Dismissal falls squarely within the language of Rule 60(b) that preserves the availability of an independent action.

n.1 (2d Cir. 1960); 7 J. Moore, J. Lucas, and J. Grotheer, Jr., Moore's Federal Practice ¶ 60.38[3] (2d ed. 1993) ("Where the independent action is brought in the court which rendered the original judgment it is supported for purposes of jurisdiction and venue on the ground of ancillary jurisdiction: a continuation of the original action for jurisdictional purposes").[14] Thus, had Guardian filed an entirely "independent action" in federal court, Judge Coyle would have had jurisdiction to entertain that action under Rule 60(b) because it was ancillary to the original case. It follows that Judge Coyle, therefore, had jurisdiction to entertain the Motion to Enforce Settlement Agreement, which was essentially the same in all material respects as an independent action under Rule 60(b).

### 3. *Guardian's Motion To Enforce Settlement Agreement Also Fulfilled The Purposes Of A Formal Rule 60(b) Motion*

In this case, Guardian's motion to enforce the settlement agreement also served every purpose of a formal Rule 60(b) motion. The thrust of Guardian's motion to enforce the parties' settlement agreement would have been precisely the same had the motion been formally designated as a Rule 60(b) motion. It immediately and unequivocally put Kokkonen on notice that Guardian was placing the issue of his blatant breach before Judge Coyle and of Kokkonen's need to defend that claim. Further, given the district court's stated expectation that any enforcement activity would be before it and not a state court (J.A. 80, 83), and its unequivocal rejection of Kokkonen's attempt to evade his obligations under the agreement (J.A. 175-

[14] Indeed, courts have held that when an independent action is brought in the same court that rendered the original judgment, it may be treated as a Rule 60(b) motion, so long as the adverse party is not prejudiced, and it is considered a continuation of the original action. *See Hadden v. Rumsey Prods.*, 196 F.2d 92, 95 (2d Cir. 1952); *Nixon v. Brewer*, 49 F.R.D. 122, 124 (M.D. Ala. 1970).



82), there is no doubt that the substantive result of Guardian's effort to enforce the settlement agreement would have been precisely the same, regardless of the manner in which the district court was asked to undertake that enforcement.

Once a court reasserts jurisdiction over a case by a motion to enforce, by an "independent action" under Rule 60(b), or by a formal Rule 60(b) motion, it then may enforce the settlement agreement. *See Hinsdale v. Farmers Nat'l Bank & Trust Co.*, 823 F.2d at 996; *Dankese v. Defense Logistics Agency*, 693 F.2d at 15; *Kelly v. Greer*, 365 F.2d at 670-71. Again, it is undisputed that a court possesses jurisdiction to enforce settlement agreements in a pending case. J.A. 193-94, 260-61. After a case has been restored to the district court's docket, there is no logical distinction between enforcing a settlement agreement at that point and at a point immediately prior to dismissal of the case.[15]

Accordingly, Guardian's Motion to Enforce Settlement Agreement allowed the district court to exercise juris-

[15] Any contention that a party seeking to enforce a settlement agreement must show some independent ground for jurisdiction after the case has been restored to the court's docket (*see Fairfax Countywide Citizens Ass'n v. Fairfax, Va.*, 571 F.2d at 1303; *see also McCall-Bey v. Franzen*, 777 F.2d 1178, 1187-90 (7th Cir. 1985)) simply is incorrect. If a court has jurisdiction to enforce a settlement agreement immediately prior to dismissal, it follows inexorably that it has jurisdiction to enforce the agreement immediately after the case is reopened. *See Hinsdale v. Farmers Nat'l Bank & Trust Co.*, 823 F.2d at 996; *Kelly v. Greer*, 365 F.2d at 670-71; *Hamilton v. School Committee of Boston*, 725 F. Supp. at 646-47. Moreover, as discussed above, any suggestion that an independent jurisdictional ground is required is wholly inconsistent with the principle that an "independent action" under Rule 60(b) and a formal Rule 60(b) motion itself both fall within the court's ancillary jurisdiction. *See Pacific R.R. of Mo. v. Missouri Pac. Ry. Co.*, 111 U.S. at 522; *Lasky v. Continental Prods. Corp.*, 804 F.2d at 254 (Rule 60(b) motion falls within a court's ancillary jurisdiction); *Crosby v. Mills*, 413 F.2d at 1276; *Martina Theatre Corp. v. Schine Chain Theatres, Inc.*, 278 F.2d at 800 n.1.

diction to enforce the settlement agreement. This is true whether jurisdiction is deemed to exist based on the ancillary jurisdiction of the court, on the equivalent of an independent action under Rule 60(b), or the equivalent of a formal motion under Rule 60(b).

## II. THE JURISDICTION OF A FEDERAL COURT TO ENFORCE A SETTLEMENT AGREEMENT AFTER DISMISSAL IS SUPPORTED BY BOTH PRACTICAL AND PUBLIC POLICY CONSIDERATIONS

### A. Practical Considerations Favor The Jurisdiction Of A Federal Court To Enforce A Settlement Agreement After Dismissal

Kokkonen's argument that allowing enforcement of a settlement agreement in the court before whom the case was litigated could unduly burden the federal courts, or somehow foster unlimited jurisdiction, (*see* Pet. Br. 37-39) simply is misplaced. Rather, federal courts have discretion to exercise—or decline to exercise—ancillary jurisdiction to enforce settlement agreements post-dismissal, as indeed they have done. *See, e.g., Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F.2d at 605-07 (court refused to reinstate action due to alleged breach of settlement agreement where plaintiff already had elected to collect money under a consent judgment); *United States v. Orr Constr. Co.*, 560 F.2d 765, 769, 772 (7th Cir. 1977) (settlement agreement that was too indefinite would not be enforced); *Denali Seafoods, Inc. v. Western Pioneer, Inc.*, 92 F.R.D. 763, 764 (W.D. Wash. 1981) (court declined to enforce settlement agreement where motion to enforce was not brought within a reasonable time).

Thus, depending on the facts with which it is confronted, a court may or may not choose to enforce a settlement agreement, or otherwise may decline to resolve a settlement-related dispute. For example, a district court has discretion to deny a motion to enforce a settlement



agreement if it deems the relief requested inappropriate by reason of the passage of time, evidence of bad faith, the court's limited involvement in the case, the fact that the court had committed few resources to the case prior to settlement, the existence of complicated state law issues relating to the enforcement of the settlement agreement, or for other reasons. *See, e.g., Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F.2d at 605-07; *Shelter-Lite, Inc. v. Reeves Bros., Inc.*, 611 F.2d 1179, 1180 (6th Cir. 1980) (court declined to enforce settlement because dispute involved new patent infringement claim); *United States v. Orr Constr. Co.*, 560 F.2d at 769, 772. If, however, the court is familiar with the case and (as in this case) the terms of the settlement, it should not be foreclosed from granting expeditious relief where it deems it appropriate to do so. To force litigants to commence a new lawsuit in a state court that is a stranger to the proceeding (where dockets are equally or more crowded than those of the federal courts)[16] would exacerbate a systemic litigation problem rather than aid in its resolution. *See* Chief Justice William H. Rehnquist, Address, *Seen In A Glass Darkly: The Future Of Federal Courts*, 1993 Wis. L. Rev. 1, 7-8 ("In determining the proper allocation of jurisdiction between state and federal courts,

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[16] Kokkonen proposes that Guardian be required to pursue enforcement of the breached settlement agreement in the California state courts. Pet. Br. 34-42. According to the Judicial Council of California Annual Data Reference, however, in fiscal year 1991-92 the total number of cases filed in the California Superior Courts alone was 1,051,063. During that same time, only 982,181 cases were disposed of, of which 684,756 were before trial. As of June 30, 1992, 99,559 cases were awaiting trial in the California Superior Courts. Thirty-eight per cent of the civil cases in those courts had a disposition time of over 24 months; only 41% were disposed of in under 12 months. Judicial Council of California, Annual Data Reference, 1991-92 Caseload Data by Individual Courts at pp. 11, 49, 53. According to the National Center for State Courts, California had the highest number of new civil cases in 1991 of any state in the United States. National Center for State Courts, State Court Caseload Statistics, Annual Report—1991 (Part III: 1991 State Court Caseload Tables), p. 111.

we need to view our federal and state systems as one resource to be used as wisely and efficiently as we can.")

Kokkonen argues that this Court should adopt a "bright line" rule that "the parties not be subject to continuing jurisdiction and oversight by the court except and unless the formal stipulation or order that disposes of the action expressly retains jurisdiction to further enforce its terms." Pet. Br. 34. It is not clear from this proposed "bright line" rule whether Kokkonen intends that the terms of the settlement agreement would have to be set forth in the order. If that is his intention, the inability to preserve the confidentiality of any settlement agreement will often be a significant disincentive to settlement for many litigants. *See McCall-Bey v. Franzen*, 777 F.2d 1178, 1200 (7th Cir. 1985) (Swygert, J., dissenting); *Kalinauskas v. Wong*, 151 F.R.D. 363 (D. Nev. 1993) ("Confidential settlements benefit society and the parties . . . . Sound judicial policy fosters and protects this form of alternative dispute resolution.") Indeed, it would be hard to construct a potentially more formidable obstacle to settlement.

If Kokkonen's "bright line" rule does not envision that the terms of the agreement would be set forth in the order, then it is difficult to discern how his rule stands on any different jurisdictional footing than that adopted by the Ninth and other circuits. Indeed, it has been argued that the mere mention of a settlement agreement in a dismissal order:

> presents a particularly hollow basis for conferring federal jurisdiction to enforce the agreement. The jurisdictional distinction between this situation and that where the dismissal failed to mention the agreement is exceptionally weak, as the two contexts are substantively, if not procedurally, identical.

A. Weiss, Note, *Federal Jurisdiction To Enforce A Settlement Agreement After Vacating A Dismissal Order Under Rule 60(b)(6)*, 10 Cardozo L. Rev. 2137, 2161 n.122 (1989).



Moreover, Kokkonen's contention that the settlement agreement in this case can be enforced only if Guardian brings a separate state court contract action contains a significant risk of injustice. Any separate state court action likely would entail significant delay.[17] Following this delay, the state court (which would be completely without familiarity with the events that led to the settlement) could decide that the settlement agreement should not be enforced because (as Kokkonen argued below) there was no meeting of the minds as to the terms of the settlement. Were that to occur, Guardian would be left with the state court action presumably at an end and the underlying federal case dismissed with prejudice.

Should Guardian elect to pursue the relief sought in its counterclaims (which it believed it had obtained through the settlement), any attempt to return to federal court after the state court sojourn also could be problematic. Guardian would have to move to reopen the federal court case (under Rule 60(b) or otherwise), but the federal court might resist granting that relief due to the passage of time since its earlier involvement in the case, or for other reasons. If the district court declined to reopen the federal case, Guardian might well be left without any remedy. Moreover, even if the district court were to permit the case to be restored to its docket, Guardian would be faced with the expensive prospect of retrying a case (that had been tried to completion except for the instruction of the jury and a verdict) after several years had passed, during which time witnesses may have been lost or their recollections faded.

The litigants quite conceivably would be forced to exhaust the judicial resources of both federal and state courts, potentially to retry a case under needlessly difficult circumstances. The costs to the parties of the various proceedings in the federal and state forums would, of course, be considerable. Permitting the only court fa-

[17] See footnote 16 above.

miliar with the case—*i.e.*, the federal court which played an active role in the settlement—to exercise jurisdiction to enforce the settlement agreement or, alternatively, to restore the case to the docket and proceed quickly to a trial on the merits, provides a significantly more efficient and effective means of resolving the dispute. The availability of jurisdiction in the district court would serve the dual purposes of conserving judicial resources and eliminating the possibility of Guardian being left without any practical remedy in a situation where, as Judge Coyle found, Kokkonen has "blatantly breached the terms of the settlement agreement." J.A. 181.[18]

Petitioner's attempt to set up a straw man—specifically, his suggestion that the Ninth Circuit's decision creates the prospect of federal courts dispensing justice, vigilante-like, whenever they feel like it—should be disregarded. In fact, the decision below endorses jurisdiction only under a narrowly-defined set of circumstances: in a case that has already been before the court, and that is before it again only for the limited purpose of enforcing a settlement reached under the court's auspices. The courts should be vigilant to provide relief under such circumstances.

### B. Compelling Public Policies Favoring Settlement, Cost Efficient Resolution Of Disputes, And Fairness To Litigants Also Support Federal Jurisdiction To Enforce Settlements After A Case Has Been Dismissed

The strong public policy that favors settlement of matters in dispute has long been recognized in this Court and in the lower courts. *See, e.g., Marek v. Chesny*, 473 U.S. 1, 5 (1985); *Williams v. First Nat'l Bank*, 216 U.S.

[18] This result is consistent with the overarching object of the Federal Rules of Civil Procedure, as set forth in Rule 1, to secure "the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1.



582, 595 (1910) ("Compromises of disputed claims are favored by the courts"); *St. Louis Min. & Mill. Co. v. Montana Mining Co.*, 171 U.S. 650, 656 (1898) ("[S]ettlements of matters in litigation, or in dispute, without recourse to litigation, are generally favored"); *Justine Realty Co. v. American Nat'l Can Co.*, 976 F.2d 385, 391 (8th Cir. 1992) ("Settlement agreements are generally encouraged and favored by the courts"); *In re Smith*, 926 F.2d 1027, 1029 (11th Cir. 1991) ("Settlement is generally favored because it conserves scarce judicial resources"); *Janneh v. GAF Corp.*, 887 F.2d 432, 435 (2d Cir. 1989), *cert. denied*, 498 U.S. 865 (1990) (referring to "our nation's strong judicial and public policies favoring out-of-court settlement"); *Bass v. Phoenix Seadrill/78, Ltd.*, 749 F.2d 1154, 1164 (5th Cir. 1985) ("public policy favors voluntary settlements which obviate the need for expensive and time-consuming litigation").[19]

The burgeoning national movement in federal and state courts and administrative agencies to use alternative dispute resolution ("ADR") is the most recent and compelling testimony to the public policy interest in the extrajudicial resolution of legal disputes. *See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990) (codified as amended at 28 U.S.C. §§ 1-205 (1991)) (Title I of which is the Civil Justice Reform Act of 1990, endorsing ADR as a component of

[19] The Federal Rules of Civil Procedure also explicitly recognize the policy favoring settlement and affirmatively seek to facilitate that policy by the provisions of several of the Rules. *See, e.g.*, Fed. R. Civ. P. 16(a)(5) (among the purposes to be served by a pretrial conference is "facilitating the settlement of the case"); Fed. R. Civ. P. 16(c)(7) (among the topics that may be discussed at a pretrial conference is "the possibility of settlement"); Fed. R. Civ. P. 68 (relating to offers of judgment, the purpose of which is "to encourage settlements and avoid protracted litigation." Advisory Committee Note to 1946 Amendment to Rule 68. *See also Marek v. Chesny*, 473 U.S. at 5 ("The plain purpose of Rule 68 is to encourage settlement and avoid litigation.")).

federal courts' delay reduction plans); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S. Ct. 1647, 1652 (1991) (discussing "healthy regard for the federal policy favoring arbitration"); *Butterkrust Bakeries v. Bakery, Confectionery & Tobacco Workers Int'l Union Local No. 361*, 726 F.2d 698, 699 (11th Cir. 1984) ("Public policy favors arbitration as an alternative means of dispute resolution"); *Davox Corp. v. Digital Sys. Int'l, Inc.*, No. CIV. A. 92-11515WF, 1993 WL 36063, at *4 (D. Mass. Jan. 25, 1993) (referring to "the sound policy of promoting extrajudicial dispute resolution, and conservation of judicial resources," and refusing to entertain a declaratory judgment action where the plaintiff had thwarted dispute resolution by filing suit). *See also*, W.E. Burger, *Foreword, American Law Institute Study on Paths To A "Better Way": Litigation, Alternatives & Accommodation*, 1989 Duke L.J. 808, 809; N. Vidmar & J. Rice, *Symposium: Jury-Determined Settlements and Summary Jury Trials: Observations About Alternative Dispute Resolution in an Adversary Culture*, 19 Fla. St. U. L. Rev. 89 (1991); R. Zampano, *Alternative Dispute Resolution: A Movement Whose Time Has Come*, Connecticut Law Tribune, August 30, 1993/September 6, 1993.

Similarly, it is widely recognized that there is a strong public policy favoring the upholding and enforcement of voluntary settlement agreements that the parties have reached. *See, e.g., Janneh v. GAF Corp.*, 887 F.2d at 435 (the "bargained-for right to avoid trial by enforcing [a] settlement agreement . . . implicates our nation's strong judicial and public policies favoring out-of-court settlement"); *Hemstreet v. Spiegel, Inc.*, 851 F.2d 348, 350 (Fed. Cir. 1988) ("The law strongly favors settlement of litigation, and there is a compelling public interest and policy in upholding and enforcing settlement agreements voluntarily entered into"); *Meetings & Expositions, Inc. v. Tandy Corp.*, 490 F.2d at 717 ("district court had not only the power but the duty to enforce a



settlement agreement which it had approved"); *Interspiro USA, Inc. v. Figgie Int'l, Inc.*, 815 F. Supp. 1488, 1521 (D. Del. 1993) (recognizing a court's "obligation to enforce settlement agreements and foster the repose of settled litigation").

Settlement accounts for the disposition of the largest portion of federal court litigation. *See generally* M. Galanter, *The Day After The Litigation Explosion*, 46 Md. L. Rev. 3, 26-27 (1986). It thus is beyond dispute that settlement reduces crowded federal court dockets and conserves the scarce resources both of litigants and the judiciary. The Ninth Circuit recognized as much in this case. J.A. 265 (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978)). A recognition by this Court that a district court may, in its discretion, enforce a settlement agreement after the case has been dismissed serves to foster these important public policies.

Although courts uniformly endorse pro-settlement policies in connection with the enforcement of settlement agreements in pending actions, Kokkonen denigrates these policies by arguing that they should be accorded less significance following dismissal. Pet. Br. 34-35. As shown above, however, the court's enforcement powers are all the more critical to expeditious and cost-effective resolution of a dispute following dismissal.

The contentions of Kokkonen and his *amici* that affirmance of the Ninth Circuit's decision will "disserve" policies favoring settlement and make enforcement less certain (Pet. Br. 39-41; Brief for the States of Ohio, et al. at 21-25) simply are unfounded. To the contrary, permitting litigants to enforce settlement agreements—or to resolve settlement-related disputes—before the federal court familiar with the dispute, and under whose active auspices the settlement was reached, can only promote those public policies. The policies are served because there will be fewer impediments to the enforcement of settlement agreements. Moreover, the parties will know,

from the beginning, that any settlement into which they enter is susceptible of enforcement in the district court and that enforcement can be undertaken in a cost-efficient and expeditious fashion. No party will be forced to incur the delay and added expense of initiating a new lawsuit in a forum that is a stranger to the dispute and no party will be left potentially remediless when faced with a breach of an agreement.

Enforcement of settlement agreements in the federal forum also reduces the chance of bad-faith settlements or disingenuous "gamesmanship" in connection with a settlement. The potential for enforcement of the agreement in federal court will discourage parties from attempting to use a settlement as a delaying tactic or from attempting to divest the federal court of jurisdiction by agreeing to a settlement without any intention of abiding by the agreement, which appears to have occurred in this case. Such conduct violates not only the rights of the non-breaching party, but the dignity and processes of the court itself. It has been noted in this regard that:

> Federal enforcement will discourage abusive settlement tactics and promote the amicable resolution of federal claims. Claimants will be reluctant to settle if to do so they must waive enforcement in the federal forum.

*Hamilton v. School Committee of Boston*, 725 F. Supp. at 647.

In short, a determination that a district court may exercise jurisdiction, in its discretion, to enforce a settlement agreement after the case has been dismissed will further the important public policies discussed above and will provide a practical and equitable means of ensuring that settlement agreements can be enforced without undue obstacles.



## CONCLUSION

For the foregoing reasons, this Court should affirm the decision below.

Respectfully submitted,

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